

SENATE FLOOR AMENDMENT

FLOOR AMENDMENT NO. 17 Date MAY 05 2009

TO: S.B. No. 199, S.D. 1, H.D. 1, C.D. 2

SECTION 1. Senate Bill No. 199, S.D. 1, H.D. 1, C.D. 2, is amended by deleting Section 2.

SECTION 2. Senate Bill No. 199, S.D. 1, H.D. 1, C.D. 2, is amended by renumbering Section 3 as Section 2.

SECTION 3. Senate Bill No. 199, S.D. 1, H.D. 1, C.D. 2, is amended by renumbering Section 4 as Section 3 and by amending subsection (a) in section 235-110.9, Hawaii Revised Statutes, to read as follows:

"(a) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter a high technology business investment tax credit that shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the investment was made and the following four years provided the credit is properly claimed[-]; provided further that for investments made on or after May 1, 2009, and before January 1, 2011, the sum of all high technology business investment tax credits available (over five years as set forth below) to all taxpayers investing in a single qualified high technology business in a single calendar year shall not exceed \$10,000,000; provided further that for investments made on or after May 1, 2009, and before January 1, 2011, high technology business investment tax credits may only be claimed to the extent that the qualified high technology business in which the investment was made has received credit allotments from the department, as set forth in subsection (i). The tax credit shall be as follows:

- (1) In the year the investment was made, for investments made prior to May 1, 2009, thirty-five per cent [7], and for investments made on and after May 1, 2009, and before January 1, 2011, twenty per cent;
- (2) In the first year following the year in which the investment was made, for investments made prior to May 1, 2009, twenty-five per cent [7], and for investments made on and after May 1, 2009, and before January 1, 2011, twenty per cent;
- (3) In the second year following the investment, twenty per cent;
- (4) In the third year following the investment, for investments made prior to May 1, 2009, ten per



- cent[+], and for investments made on and after May 1, 2009, and before January 1, 2011, twenty per cent; and
- (5) In the fourth year following the investment, for investments made prior to May 1, 2009, ten per cent[+], and for investments made on and after May 1, 2009, and before January 1, 2011, twenty per cent;

of the investment made by the taxpayer in each qualified high technology business, up to a maximum allowed credit in the year the investment was made, [~~\$700,000,~~] \$700,000 for investments made prior to May 1, 2009, and \$400,000 for investments made on and after May 1, 2009, and before January 1, 2011; in the first year following the year in which the investment was made, [~~\$500,000,~~] \$400,000 for investments made prior to May 1, 2009, and \$400,000 for investments made on and after May 1, 2009, and before January 1, 2011; in the second year following the year in which the investment was made, \$400,000; in the third year following the year in which the investment was made, [~~\$200,000,~~] \$200,000 for investments made prior to May 1, 2009, and \$400,000 for investments made on and after May 1, 2009, and before January 1, 2011; and in the fourth year following the year in which the investment was made, [~~\$200,000,~~] \$200,000 for investments made prior to May 1, 2009, and \$400,000 for investments made on and after May 1, 2009, and before January 1, 2011. For purposes of this section, "taxpayer" shall mean the taxpayer that is ultimately liable to pay any applicable taxes and shall not include a partnership, limited liability company, or other pass-through entity; provided that any direct or indirect investment made into a qualified high technology business by a partnership, limited liability company, or other pass-through entity shall be deemed to have been made by its respective partners, members, or other beneficial owners who are the taxpayers that are ultimately liable to pay any applicable taxes."

SECTION 4. Senate Bill No. 199, S.D. 1, H.D. 1, C.D. 2 is amended by deleting subsection (i) in section 235-110.9, Hawaii Revised Statutes, and replacing it with a new subsection (i) to read as follows:

"(i) All claims of high technology business investment tax credits under this section for investments in qualified high technology businesses made after on and after May 1, 2009, and before January 1, 2011, shall be made subject to the following aggregate and periodic credit caps and credit allotment procedures:

- (1) Aggregate and periodic credit caps for all new investments. The maximum amount of high technology business investment tax credits available under this



section shall not exceed the following amounts for the following periods:

(A) \$80,000,000 to be claimed over the five-year period set forth in subsection (a) for investments made beginning on May 1, 2009, and through December 31, 2009; and

(B) \$80,000,000 to be claimed over the five-year period set forth in subsection (a), for investments made during the calendar year beginning on January 1, 2010, and ending on December 31, 2010, plus any carryover credit allotments available from unused credit allotments from the prior calendar years and in subparagraph (A).

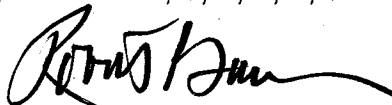
- (2) Credit allotments. Beginning on May 1, 2009, the department shall provide credit allotments to qualified high technology businesses up to the maximum amount of high technology business investment tax credits as provided in paragraph (1). A qualified high technology business may apply for a credit allotment of high technology business investment tax credits in any amount not to exceed an aggregate of \$10,000,000 for investments it receives in a single calendar year (to be claimed over the five-year period set forth in subsection (a)) for investments, as defined in section 235-1, made in a qualified high technology business in the same calendar year. A qualified high technology business may apply for an allotment of high technology business investment tax credits, on a form prescribed by the department, or by a duly executed written letter or statement delivered to the department prior to the time that the department has established and published a prescribed form, on or after the day on which that qualified high technology business has received the investment for which that allotment is applied for; provided that in order to apply for that allotment, the qualified high technology business shall attest and declare to the department the amount of investment that the qualified high technology business has received for which it is applying for that allotment; provided further that the qualified high technology business submits to the department a copy of the checks, bank deposit receipts, wire transfer confirmations, or other evidence reasonably acceptable to the department to verify that the qualified high technology business has received the investment for which the allotment is being applied for. All allotments issued by the



department shall be made on a first to apply basis only. Notices of all allotments and denials thereof shall be certified in writing and delivered to the respective qualified high technology business by the department by email, fax, United States Postal Service, or other means reasonably requested by the qualified high technology business and approved by the department, within one business day of the department's receipt of the application for that allotment. If a qualified high technology business does not receive the full allotment of high technology business investment tax credits applied for, the qualified high technology business may, at an investor's option, refund to that investor all or any portion of that investor's investment for which allotment was applied for. An investor's right to receive such refund of its investment shall not negate or invalidate an investment's status as being nonrefundable or at risk, as required by section 235-1. Beginning no later than July 1, 2009, the department shall post on its website in a manner accessible to the general public the total amount of allotments made, and the total unused allotments of credits remaining available under this subsection, which posting shall be updated by the department within one business day of making any allotment of credits pursuant to this subsection.

- (3) Non-transferable nature of allotments. All credit allotments issued by the department shall be non-transferable, non-negotiable, and non-assignable; provided that a statutory conversion in the form of business entity shall not be considered a transfer or assignment.
- (4) Credit claims subject to audit. Notwithstanding a credit allotment under this section, every claim for credit shall be subject to audit or review by the department."

SECTION 5. Senate Bill No. 199, S.D. 1, H.D. 1, C.D. 2, is amended by renumbering Sections 5, 6, 7, 8, 9, and 10, as sections 4, 5, 6, 7, 8, and 9, respectively.

Offered by:  () Carried

(✓) Failed to Carry

() Withdrawn

